IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2006

CORAM :

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Civil Miscellaneous Appeal No.910 of 1999

1. Krishnamurthy

2. National Insurance Co. Ltd.,
Vellore-1. .. Appellants

Vs.

1. G.Raji

2. The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Dharmapuri. .. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.11.1998, made in MACT.O.P. No.578/96 on the file of the Motor Accident Claims Tribunal (Sub-Judge), Hosur.

For Appellants : Mr.N.Vijayaraghavan
For Respondents : No appearance for R1
Mr.P.Jagadeeswaran for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 23.11.1998 in MACT.O.P. No.No.578/96 on the file of the Motor Accident Claims Tribunal (Sub-Judge), Hosur.

2. The main submission put forth by the appellants is that the Tribunal has found that the claimant, the first respondent herein had contributed to the accident and fixed the ratio of negligence on his part as 50% and therefore the Tribunal ought not to have fastened the liability on the first appellant, the owner of the car, with whom, the first respondent / claimant was working as a driver.

3. In support of his contention, the learned counsel appearing for the appellants, relied upon the decision of the Hon'ble Apex Court rendered in the case of Tamil Nadu State Transport Corporation, Tanjore Vs. Natarajan and Others,

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reported in 2004 (2) TN MAC 28 (SC). Admittedly, the Tribunal has fixed the ratio of contributory negligence at 50% on the first respondent / claimant and no appeal has been filed against the said finding by the first respondent. The only question to be decided in the above appeal is whether the Tribunal is right in fastening the liability on the employer of the first respondent, namely, the first appellant herein, when the first respondent himself had contributed to the accident. In 2004 (2) TN MAC 28 SC, the Supreme Court observed as follows:

> "9. From the facts of the case and nature of the claim stated above, we find absolutely no justification in law for the Division Bench of the Madras High Court in its impugned order imposing liability to the extent of 50% on the appellant / Corporation. The Division Bench of the High Court completely over-looked that the claimant himself was driver of the Corporation bus and was found negligent to the extent of 50% for causing accident. In view of the above finding of the contributory negligence on the part of the claimant as driver of the Corporation bus, the Corporation as an employer cannot be held to be vicariously liable for the negligence of the claimant himself. The claim petition did not make the Corporation as a party to the claim obviously because the claimant exercised option of approaching the Claims Tribunal under the Motor Vehicles Act against the owner and insurer of the private bus. He did not file any claim under the Workmen Compensation Act against the employer. Since the Corporation was not at fault and the accident was caused because of the contributory negligence of the drivers of both the buses, the Corporation could not be held liable under the provision of Motor Vehicle Act. It was not a claim based on "no fault liability". It was a claim petition filed by the claimant against the owner and insurer of the private bus. The claimant is also represented before us and on his behalf it is stated that he has been given compassionate appointment on suitable alternative job and he never desired to obtain any other compensation from his employer. The Division Bench of the High

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> Court therefore committed a serious error in apportioning and fastening 50% liability of compensation on the appellant / Corporation. This part of the award therefore deserves to be set aside."

The ratio of the above Supreme Court judgment squarely applies to the facts of this case.

4. Learned counsel for the first respondent, by relying upon the decision of the Apex Court in AIR 2004 SUPREME COURT 4882 in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma and others, submitted that the second appellant should be directed to pay the compensation amount awarded and to recover the same from the first appellant.

5. The facts of the case relating to AIR 2004 SUPREME COURT 4882 is totally different and the ratio laid down therein, is not applicable to the facts of this case. Unless the insured is made liable to pay the compensation, the insurer cannot be directed to pay the amount and recover the same from the insured. Since in this case it is held that the first respondent / claimant, the driver of the vehicle owned by the first appellant herein, has contributed to the accident and the Tribunal has fixed the ratio of contributory negligence at 50% on the part of the first respondent driver, the first appellant is not liable to pay any compensation. Consequently, the second appellant / insurer will not be liable to pay any compensation. For the said reasons, the appeal is allowed. However, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Motor Accident Claims Tribunal
Sub Judge, Hosur.

2.The Record Keeper,VR Section, High Court, Madras

+1cc to Mr.N.Vijayaraghavan, Advocate Sr 40826
+1cc to Mr.T.R.Rajaraman, Advocate 40943

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km/4.6.

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